

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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Case No. 2:15-cr-00214-RFB

UNITED STATES OF AMERICA,

Plaintiff,

v.

DANIEL WALTER SYDOW,

Defendant.

**ORDER FINDING DEFENDANT SYDOW
NOT COMPETENT TO STAND TRIAL**

I. INTRODUCTION

For the reasons stated below, the Court finds that Daniel Sydow is incompetent to stand trial on federal criminal charges and commits Daniel Sydow to the custody of the Attorney General based on this finding.

II. BACKGROUND

On July 22, 2015, Daniel Sydow was charged via the Indictment with one count of bank robbery under 18 U.S.C. § 2113(a). ECF No. 8. On July 30, 2015, at Mr. Sydow's initial appearance, defense counsel requested a competency evaluation to determine (1) whether the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature of consequences of the proceedings against him or to assist properly in his defense; and (2) whether defendant suffered from a mental disease or defect rendering him mentally incompetent at the time of the commission

1 of the charged offenses, under 18 U.S.C. §§ 4241, 4242, and 4247, and Rule 12.2(c) of the Federal
 2 Rules of Criminal Procedure. ECF No. 12. On July 31, 2015, the Court ordered a competency
 3 evaluation by the Bureau of Prison (BOP). ECF No. 11.

4 Mr. Sydow was transferred to the BOP Metropolitan Detention Center in Los Angeles for
 5 a competency examination. On October 29, 2015, the BOP evaluator, Dr. Tiffany Smith,¹ filed
 6 two reports, a Forensic Evaluation Report and an Addendum on the Issue of Responsibility,
 7 concluding that Mr. Sydow is competent. ECF No. 22. On April 1, 2016, Defendant filed an
 8 examination report submitted by Dr. Norton A. Roitman finding Mr. Sydow to be incompetent.
 9 ECF No. 34.

10 Defendant's counsel filed a motion for competency hearing on April 8, 2016. ECF No. 33.
 11 The government did not file an opposition to this motion. The Court granted this motion on May
 12 10, 2016. ECF No. 36. The government filed an Emergency Motion for a Follow-Up Competency
 13 Examination on May 13, 2016, which the Court denied. ECF Nos. 37, 38. The Court held a
 14 competency hearing on May 23, 2016 and heard oral argument regarding Defendant's competency
 15 on June 1, 2016. ECF Nos. 46, 47.

16 17 **III. LEGAL STANDARD**

18 The Due Process Clause of the Fifth Amendment prohibits trying a defendant who is
 19 mentally incompetent. Cooper v. Oklahoma, 517 U.S. 348, 354 (1996); Pate v. Robinson, 383 U.S.
 20 375, 378 (1966). "A person whose mental condition is such that he lacks the capacity to understand
 21 the nature and object of the proceedings against him, to consult with counsel, and to assist in
 22 preparing his defense may not be subjected to a trial." Drope v. Missouri, 420 U.S. 162, 171 (1975).

23 18 U.S.C. § 4241(d) "establishes a two-part disjunctive test of competency: If ... the
 24 [district] court finds by a preponderance of the evidence that the defendant is presently suffering
 25 from a mental disease or defect rendering him mentally incompetent to the extent that he is
 26 _____

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 28 ¹ Dr. Smith was known as Dr. Brown at the time she submitted her report, but for the sake
 of clarity the Court refers to her, as she is presently known, as Dr. Smith.

1 unable[1] to understand the nature and consequences of the proceedings against him or [2] to assist
2 properly in his defense, the court shall [declare the defendant incompetent and] commit [him or
3 her] to the custody of the Attorney General.” United States v. Friedman, 366 F.3d 975, 980 (9th
4 Cir. 2004).

6 **IV. FACTUAL FINDINGS**

7 The Court makes the following factual findings. Mr. Sydow was previously hospitalized
8 for significant periods of time from 2001 to 2007 in the Florida State Hospital in Chattahoochee.
9 Def.’s Ex. B at 1. His health records from the King County Jail in Florida indicate that he was
10 diagnosed in the jail with Schizophrenia, paranoid type. Id. A similar diagnosis was reached at the
11 Northeast Florida State Hospital in 2007. Id. On September 2, 2008, Mr. Sydow was admitted to
12 Western State Hospital in Florida and was observed and evaluated by treatment and forensic staff,
13 where he was diagnosed with Schizoaffective Disorder, bipolar type by Dr. Hendrickson. Id. at 2.
14 Dr. Hendrickson conducted an evaluation of Mr. Sydow’s competency to stand trial and noted that
15 he exhibited a fixed delusional belief about the court system. Id. Specifically, Mr. Sydow indicated
16 that his deceased father, who was speaking with God, could convey information to the judge in his
17 case, who would in turn send him back to a hospital in Florida. Id. As a result of this examination,
18 Dr. Hendrickson noted that while Mr. Sydow had a basic understanding of the court system, his
19 delusional beliefs interfered with his ability to assist his attorney in his own defense. Id.

20 Mr. Sydow was returned to Western State Hospital one month later on October 2, 2008 for
21 treatment and evaluation regarding competency, during which time many of the same psychotic
22 symptoms were reported. Id. Specifically, Mr. Sydow stated to Dr. Hendrickson that he “wouldn’t
23 discuss [his] case with his lawyer” because of his plan with God, and that “God doesn’t lie to
24 you...what God says is.” Id.

25 After this second Western State Hospital evaluation, Mr. Sydow’s attorney noted ongoing
26 difficulties working with his client and hired an independent examiner to conduct a second
27 competency evaluation; Dr. Young, submitted on February 23, 2009. Id. at 3. Dr. Young found
28

1 that Mr. Sydow experienced and continued to experience auditory hallucinations for the past 30
2 years. Id. at 8. Dr. Young found that Mr. Sydow's ability to think and converse rationally regarding
3 his case was heavily impacted by a persistent and delusional belief that a resolution by God had
4 been reached, which required that he plead guilty, at which point the judge would send him back
5 to Florida. Id. at 11. As a result, Dr. Young concluded that Mr. Sydow lacked the capacity to
6 consult rationally with his attorney in the preparation of a defense and that despite the fact that his
7 delusions may lessen or cease with treatment, it was equally likely that his delusions would persist.
8 Id. at 12.

9 Dr. Young and Dr. Hendrickson's findings regarding Mr. Sydow's competency are
10 consistent with those of Dr. Roitman's. ECF No. 34. Dr. Roitman conducted his evaluation of Mr.
11 Sydow in February 2016. Id. The Court finds Mr. Sydow's statements to Dr. Roitman during the
12 course of his evaluation to be credible and consistent with statements made to Dr. Young and Dr.
13 Hendrickson previously. See Def.'s Ex. B; ECF No. 34. Dr. Roitman found that Mr. Sydow was
14 driven by delusions. ECF No. 34, 7-9. Mr. Sydow stated that "he had an arrangement with God"
15 and that "God's divine powers would somehow cause the court to give him a seven year sentence."
16 Id. at 7-8. These beliefs were immutable. Id. at 8. Because of this belief, Mr. Sydow indicated that
17 he would not comply with his attorney or the legal procedural process, as he did not understand
18 the relevance or significance of doing so given his arrangement with God. Id. at 7-8. Mr. Sydow
19 did not appreciate or differentiate his personal beliefs from the court's imperatives based on the
20 legal system. Id. at 8. Dr. Roitman concluded that Mr. Sydow lacked the capacity to proceed to
21 trial because of his inability to assist his attorney in his case, and stated that even if Dr. Smith's
22 evaluation were valid, Mr. Sydow was currently swayed by delusions that impair his competence
23 with respect to his case. Id. at 9.

24 While BOP expert Dr. Smith concluded that Mr. Sydow was competent to stand trial in her
25 reports submitted in October 2015, Dr. Smith agreed at the competency hearing on May 23, 2016
26 that Mr. Sydow's hallucinations as described by Dr. Roitman would qualify as an impairment that
27 would render him incompetent. Specifically, Dr. Smith indicated that a belief by Mr. Sydow that
28 he has a specific arrangement with God to serve a 7 year sentence, would be an indication of a

1 fixed delusional belief that would render him incompetent. Therefore, the Court does not find that
2 Dr. Smith's opinion is in contradiction with the opinions of the three other experts in this case, in
3 particular Dr. Roitman's. On the contrary, the Court finds that Dr. Smith's findings in her 2015
4 report can be read consistently with Dr. Roitman's, as well as Dr. Hendrickson's and Dr. Young's.

5 6 **V. DISCUSSION**

7 Based on the Court's factual findings, the Court finds that Mr. Sydow, who suffers from a
8 schizoaffective disorder and who believes that he has an arrangement with God in which he must
9 and can only serve a 7 year sentence irrespective of the actions of the attorneys in his case or even
10 those of the judge, is unable to assist properly in his defense and therefore incompetent to stand
11 trial under Section 4241(d). The Court finds that Mr. Sydow is not competent and therefore
12 remands him to the custody of the Attorney General.

13 The Court notes that there are four expert opinions regarding Mr. Sydow's competence:
14 two prior opinions from Dr. Young and Dr. Hendrickson from 2008 and 2009, See Def.'s Ex. B;
15 and the reports from Dr. Smith and Dr. Roitman from 2015 and 2016, See ECF Nos. 22, 34. All
16 four experts agree that Mr. Sydow suffers from schizoaffective disorder. See Def.'s Ex. B, ECF
17 Nos. 22, 34. The Court finds that each of these experts' diagnoses supports a current finding of
18 incompetence based on the specific delusional beliefs articulated by Mr. Sydow to Dr. Roitman.

19 Additionally, the Court has had multiple occasions to observe Mr. Sydow. Mr. Sydow
20 possesses a sincere and unshakable belief that God, or some higher power, has already determined
21 that he must serve a specific sentence of seven years, irrespective of the actions of his lawyer, the
22 government, or the Court—and because of this belief, he is unable and unwilling to assist his
23 counsel in his own defense. The Court finds that Mr. Sydow has strongly expressed his preference
24 to proceed in his case in anticipation of obtaining the seven year sentenced arranged by God.
25 Therefore, the Court finds that while Mr. Sydow may understand the nature and object of the
26 proceedings against him, he is unable to assist in preparing his defense. See Drope v. Missouri,
27 420 U.S. 162, 171 (1975).
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1 Based on Mr. Sydow's history of mental health issues, the four expert reports before it, the
2 testimony and evidence presented at the competency hearing, and the factual findings as articulated
3 above, the Court finds by a preponderance of the evidence that the defendant is presently suffering
4 from a mental disease or defect rendering him mentally incompetent to the extent that he is unable
5 to assist properly in his defense and therefore stand trial, pursuant to Section 4241(d). See United
6 States v. Friedman, 366 F.3d 975, 980 (9th Cir. 2004). While it is possible that Mr. Sydow's mental
7 impairment could remit with certain intensive treatment, there is not a substantial probability that
8 he would be rendered competent.

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10 **VI. CONCLUSION**

11 **IT IS ORDERED** that Mr. Sydow is committed to the custody of the Attorney General in
12 accordance with 18 U.S.C. § 4241(d). The Attorney General shall hospitalize the defendant for
13 treatment in a suitable facility for such a reasonable period of time, not to exceed four months, as
14 is necessary to determine whether there is a substantial probability that in the foreseeable future
15 he will attain the capacity to permit the proceedings to go forward; and for an additional reasonable
16 period of time until his mental condition is so improved that trial may proceed, if the court finds
17 that there is a substantial probability that within such additional period of time he will attain the
18 capacity to permit the proceedings to go forward; or the pending charges against him are disposed
19 of according to law; whichever is earlier.

20 **IT IS FURTHER ORDERED** that a status hearing is set for September 12, 2016 at
21 2:00 PM at which time the parties shall apprise the court as to the status of this matter.

22 **IT IS FURTHER ORDERED** that the parties shall file a status report by August 29,
23 2016.

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25 **DATED:** June 28, 2016.

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RICHARD F. BOULWARE, II
United States District Judge